

S.B. Civil Writ Petition No.3980/2007

Mangilal Vyas

VS

Asst. Commissioner & Ors.

Date of order : 10.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr. BV Thavi, for the petitioner.

Mr. SK Calla, for the respondent.

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Heard learned counsel for the parties.

The petitioner's right to cross-examine one of the witness Rishi Giri was closed by the order of the trial court dated 5.6.2006.

The petitioner submitted an application on 7.12.2006 seeking permission to cross-examine the witness Rishi Giri. The said application was dismissed by the trial court vide order dated 12.4.2007, hence, this writ petition.

According to learned counsel for the petitioner 5th June, 2006 was the first date for cross-examination of the witness Rishi Giri and on that date the petitioner was not available in Jodhpur city as his other cases were fixed for evidence at Kota. The petitioner narrating all the facts submitted application before the trial court and stated that petitioner's case was fixed at Kota on 5th June, 2006 and, thereafter, it was fixed for 6th, 7th, 12th and 13th June, 2006. In view of the above peculiar

facts, the petitioner could not attend the court at Jodhpur and his right to cross-examine an important witness was closed by the trial court. Learned counsel for the petitioner submitted that the only prayer of the petitioner is for cross-examination of the very important witness Rishi Giri and because of any delay, the other party can be compensated by payment of cost. However, according to learned counsel for the petitioner, in fact, there was no delay as on the said date, the cross-examination was closed, however, there could be delay in moving application because the petitioner had to obtain copies of the order-sheets from the court.

Learned counsel for the respondent vehemently submitted that the case was old one and the trial court on 24th April, 2006 very specifically ordered that this is one of the oldest case and as far as possible the dates are required to be given every day. In this situation, the trial court rightly closed the evidence of the plaintiff. Further the petitioner failed to give any reason for delay of six months in moving the application for cross-examination of the witness and, therefore, there is no reason to permit the petitioner for cross-examine the witness Rishi Giri.

I considered the submissions of learned counsel for the parties and perused the reasons given by the

trial court.

It is not disputed that on 5th June, 2006 right of cross-examination of the petitioner was closed and that was the first date when the case was fixed for cross-examination of the witness after the order dated 24th June, 2006 as on 23rd May, 2006, the witness was not present. The petitioner when was appearing in other court at Kota in a criminal case then that was a just reason for the court below to give one more opportunity to the petitioner to cross-examine witness Rishi Giri. Mere delay of six month when the Presiding Officer was not available for three occasions, I do not find that the petitioner should have been denied right to cross-examine the important witness Rishi Giri.

In view of the above reasons, the writ petition of the petitioner is allowed, the orders of the trial court dated 5th June, 2006 and 12th April, 2007 are set aside. The petitioner shall be entitled to cross examine the respondent's witness Rishi Giri on payment of cost of Rs.1,000/-.

(PRAKASH TATIA), J.

c.p.goyal/-